IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

CRL.A.No. 952 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRLP.15/2007 Dated 09/01/2007 CC.377/2003 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM

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APPELLANT: COMPLAINANT

M.J.PLYWOOD INDUSTRIES, MANTHANAM P.O., KUNNAMTHANAM, PATHANAMTHITTA, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER K.V.THOMAS, PUTHENVEETTIL HOUSE, ALLAPPARA ROAD, CHANGANASSERY.

BY ADV. SRI.SARVOTHAMAN

RESPONDENTS: ACCUSED & STATE

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1. M/S SHREE SHAKTI PLYWOODS, 38, MADURAI ROAD, TRICHY-620008, REPRESENTED BY ITS PARTNER A.JAWAHARLAL.

2. A.JAWAHARLAL, PARTNER, M/S SHREE SHAKTI PLYWOODS, 38, MADURAI ROAD, TRICHY-620008, TAMILNADU.

3. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

R3-BY P.P.SRI.S.DILEEP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.952 OF 2007

Dated this the 11th day of June, 2007.

JUDGMENT

The learned counsel appearing for the appellant/complainant submits that the order impugned has been passed under Section 256 (1) of the Cr.P.C by which the accused was acquitted for the absence of the complainant/appellant before the court below. A reading of the order impugned would show that the respondents/accused had never appeared before the court in spite of the summons received by them. However, the court below had taken steps to serve notice to the respondents/accused under Sections 82 and 83 of the Code of Criminal Procedure and the case was posted on 10.10.2006. But on that day, the appellant/complainant did not appear before the court. Then the case was posted for the next day namely on 11.10.2006. On 11.10.2006 also the appellant did not appear. Hence, the order impugned has been passed.

2. Once steps have been taken under Sections 82 and 83 of the Code of Criminal Procedure, it is the duty of the trial court to get the presence of the accused before the court. Hence, absence of the

appellant cannot be taken as a ground to pass an order under Section 256(1) of the Code. Apart from that, the court below had not considered the principles laid down by this Court in the judgment reported in **Don Bosco v. Partech Computers Ltd.** (2005(2) KLT 1003) and **G.F.S Chit & Loans (P) Ltd. v. Rajesh** (2006(3) KLT 825) and also the judgment of the Apex Court reported in **Associated Cement Co.Ltd. v. Keshvanand** (1998 (1) KLT 179 (SC). In the above three judgments, this Court as well as the Apex Court had held that the trial court shall not invoke the provisions of Section 256 of the Cr.P.C without applying its mind.

3. In the circumstances, the order under challenge is set aside and the matter is remanded back to the trial court for a fresh consideration on issuing fresh steps to get the presence of the accused. The appellant shall appear before the court below without fail on 28.7.2007. The appellant is also directed to co-operate with the court to take out all possible steps to issue notice to the respondents as per the provisions of Sections 82 and 83 of the Code of Criminal Procedure.

Ordered accordingly.

K. THANKAPPAN, JUDGE.

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